No. 17-646

In The Supreme Court of the United States

TERANCE MARTEZ GAMBLE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari
To The United States Court of Appeals
For The Eleventh Circuit

RESPONSE IN OPPOSITION TO AMICI'S MOTION TO PARTICIPATE IN ORAL ARGUMENT AND FOR EXPANDED ARGUMENT

The motion of the amici states for argument time should be denied. First, this case does not present the question amici raise. Second, amici's arguments are adequately presented in their brief. Third, amici lack any justification for requesting expanded argument time, rather than divided argument time; indeed, Respondent's apparent refusal to share its own time speaks volumes about the need for amici's participation.

The Court should deny leave to participate in argument because the issues amici raise in their motion are not clearly presented in this case, which is about whether

the Double Jeopardy Clause bars a federal prosecution following a state prosecution. *See Abbate v. United States*, 359 U.S. 187 (1959). Amici are concerned with the opposite scenario: whether the Clause bars a state prosecution following a federal prosecution. *See Bartkus v. Illinois*, 359 U.S. 121 (1959). Amici contend that this case will resolve both the federal-first and the state-first questions. *See* Motion at 2. But the parties have neither raised nor briefed the question whether the Double Jeopardy Clause, as incorporated through the Fourteenth Amendment, would bar a state prosecution following a federal prosecution. That question presents a different set of issues than are at stake here. In fact, Petitioner's own amici disagree about whether the result in this case would extend to the federal-first question. *Compare* Brief of Amici Curiae Criminal Defense Experts In Support of Petitioner, at 16, *with* Brief of Amici Curiae Criminal Procedure Professors In support of Petitioner, at 31 n.8. Respondent's amici also recognize that federal-first prosecutions present a different set of issues. One brief makes a Tenth Amendment argument that is not implicated when an initial state prosecution bars a second federal prosecution. *See* Brief of Amici Curiae National Association of Counties et al., at 6–10. Another argues the issue is different for American Indian Tribes because Congress has plenary control over incorporation of the Bill of Rights against the tribes and because tribal prosecutions do not implicate federalism. *See* Brief of Amici Curiae National Indigenous Women's Resource Center and National Congress of American Indians, at 25–30.

In any event, amici's arguments are fully laid out in their brief. Argument time should be limited to amici whose interests and arguments are directly at issue and are not adequately presented in the briefs. And amici fit neither bill.

Even if amici were to participate, this Court should deny the request for expanded argument time. Granting the request would set a surprising precedent. This Court generally does not expand argument time for an amicus simply because a case presents an issue of federal criminal law that may affect state criminal law. Indeed, amici have cited not a single example of such a result. In nine of amici's ten cited cases, this Court granted a state *divided* argument time, not additional time. Motion at 3. The only cited case granting additional time to an amici state was decided nearly fifty years ago and involved a constitutional challenge to an ordinance passed by one of California's own municipalities. *City of Burbank v. Lockheed Air Terminal, Inc.*, 409 U.S. 1073 (1972). California's interest in its own municipality's ordinance was far more direct than amici's interest in the federal issue at stake here. The reason for this lack of precedent supporting amici is also readily apparent: If amici's interest in this case were truly substantial, Respondent would surely have offered to divide its argument time.

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The Court should deny amici leave to participate in oral argument. If this Court were to permit amici to participate, amici's time should be divided with Respondent. However, if this Court were to grant amici additional time, Petitioner should be granted the same amount of additional time.

Respectfully submitted,

BARRE C. DUMAS
126 Government Street
Mobile, AL 36602

AMANDA K. RICE
JONES DAY
150 W. Jefferson Ave.
Suite 2100
Detroit, MI 48103

ROBERT N. STANDER
JONES DAY
51 Louisiana Ave., NW
Washington, DC 20001

LOUIS A. CHAITEN
Counsel of Record
EMMETT E. ROBINSON
JONES DAY
901 Lakeside Ave.
Cleveland, OH 44114
(216) 586-7244
lachaiten@jonesday.com

Counsel for Petitioner

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